

BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF INSURANCE  
HELENA, MONTANA

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IN THE MATTER OF:	)	CASE NO. 2001-4
	)	
THE PROPOSED DISCIPLINARY	)	
TREATMENT OF DEBRA NESBITT, DBA	)	FINAL AGENCY DECISION
JD'S BAIL BONDS,	)	
	)	
Respondents.	)	

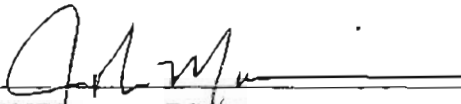
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The Montana State Auditor, acting as Insurance Commissioner (hereafter "Commissioner"), has reviewed the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Order (hereafter "Proposed Order") in this matter (Exhibit A). Despite being afforded ample opportunity to file objections or exceptions, Respondent failed to file any. Therefore, the Commissioner finds good cause to enter the following:

ORDER

1. The Proposed Order is adopted in its entirety as the Final Agency Decision in this matter; thus,
2. The Respondent's insurance producer license is immediately revoked; and
3. The Respondent is to pay a fine of \$2,500 within 5 days.

SO ORDERED this 6 day of March, 2002.

  
JOHN MORRISON  
State Auditor and  
Commissioner of Insurance

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing **FINAL AGENCY DECISION** to the following persons by depositing the same in the U.S. Mail, certified, return receipt requested, on this 6 day of March, 2002.

TO: Ms. Debra L. Nesbitt  
Dba JD's Bail Bonds  
521 3<sup>rd</sup> Street #3  
Havre, MT 59501

Ms. Jennifer L. Scheinz  
Attorney at Law  
7 West Sixth Avenue, Suite 4Q  
Helena, MT 59601

  
Pamela Weiss  
State Auditor's Office

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6 BEFORE THE MONTANA STATE AUDITOR  
7 AND COMMISSIONER OF INSURANCE  
8 HELENA, MONTANA

9 IN THE MATTER OF: ) Case No. 2000-4  
10 )  
11 THE PROPOSED DISCIPLINARY ) HEARING EXAMINER'S  
12 TREATMENT OF DEBRA L. NESBITT, ) PROPOSED  
DBA JD'S BAIL BONDS, ) FINDINGS OF FACT,  
Respondent. ) CONCLUSIONS OF LAW,  
AND ORDER

13 Pursuant to mailed notice, on Monday, July 30, 2001, in the  
14 Second Floor Conference Room of the State Public Health and Human  
15 Services Building, 111 Sanders Street, Helena, Montana, a con-  
16 tested case hearing was conducted by the undersigned hearing  
17 examiner in the above matter, and a continuation of that hearing  
18 was thereafter conducted on Thursday, August 30, 2001, in the  
19 Basement Conference Room of the Hill County Courthouse, 315  
20 Fourth Street, Havre, Montana. The hearing and continued hearing  
21 (hereafter the "hearing(s)" or "contested case hearing(s)") were  
22 conducted pursuant to the hearings and appeals provisions of the  
23 Montana Insurance Code (§§ 33-1-701, et seq., MCA); the contested  
24 case provisions of the Montana Administrative Procedure Act (§§  
25 2-4-601, et seq., MCA); and Montana's statutory, public  
26  
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1 participation in governmental operations notice and hearing  
2 provisions (§§ 2-3-101, et seq., MCA).

3 At the contested case hearing, Roberta Cross Guns, Legal  
4 Counsel for the Montana State Auditor's Office represented the  
5 Insurance Department (DOI) of the Commissioner of Insurance (COI)  
6 and the Respondent, Debra L. Nesbitt, was represented by  
7 Jennifer L. Scheinz.

8 Testimony was received from Hill County Deputy Sheriffs,  
9 Dottie Dwyer and Dana Roe; Insurance Investigator, John Forsman;  
10 and Insurance Compliance Specialist, Joseph Craig Barrens, on  
11 behalf of DOI. Testimony was also received from the Respondent  
12 on behalf of herself. Rebuttal testimony presented by DOI was  
13 received from Havre City Court Judge, Joyce Perszyk; [REDACTED]

14 [REDACTED] and [REDACTED]. The following documents were received  
15 into evidence: Twelfth Judicial District Court Pleadings (con-  
16 sisting of: a December 21, 2000, "Judgment"; an August 10, 2000,  
17 "Motion For leave To File Information"; and a February 15, 2001,  
18 "Order On Defendant's Motion To Correct Judgment") in Cause No.  
19 DC-00-074 (Exhibit 1); Insurance Investigation Bureau Chief, Leon  
20 L. Belville's December 8, 1998, letter to Respondent (Exhibit 2);  
21 Respondent's December 9, 1998, reply letter to Mr. Belville  
22 (Exhibit 3); March 2001 JD's Bail Bonds newspaper advertisement  
23 (Exhibit 4); an April 9, 2001, vehicle receipt (Exhibit A); a  
24 March 24, 2001, Seneca "Power of Attorney" surety bond (Exhibit  
25 B); JD's Bail Bonds's March 24, 2001, "Agreement To Pledge Prop-  
26 erty As Collateral" (Exhibit C); JD's co-signor "Notice" (Exhibit  
27

1 D; and "Contract For Bail Bond" (Exhibit F). Exhibits 2 and 4,  
2 were admitted over objection of counsel. All other exhibits were  
3 admitted without objection.

4 From the testimonial and documentary evidence presented, the  
5 Hearing Examiner makes the following proposed:

6 FINDINGS OF FACT

7 1. Debra Nesbitt (Nesbitt) holds a surety insurance  
8 producer license issued by the Montana State Auditor's Office,  
9 and was an insurance producer during the times in question,  
10 operating a bail bond business under the name of JD's Bail Bonds  
11 (Tr. 30 and 127.) Nesbitt has been an insurance producer for  
12 more than four years. (Tr. 127.)

13 2. During September, 2000, John Forsman (Forsman) an  
14 insurance investigator for the Department of Insurance (DOI) for  
15 the Montana State Auditor/Insurance Commissioner testified that  
16 he was contacted by Deputy Dottie Dwyer (Dwyer) of the Hill  
17 County Sheriff's Office regarding allegations of criminal  
18 activity by JD's Bail Bonds. (Tr. 25, 27, and 28.)

19 3. With Dwyer present, Forsman interviewed Nesbitt on  
20 September 26, 2000, at the Hill County Sheriff's Office. (Tr. 24  
21 and 32.) When asked by Forsman during this interview whether she  
22 writes all of the bonds, Nesbitt affirmed that she wrote every-  
23 thing, with the exception of one bond written for a [REDACTED]  
24 by Lynn LaTray, a secretarial employee of Nesbitt (Tr. 173 and  
25 175), for which she told Forsman that she had reviewed all of the  
26 paperwork. Nesbitt also told Forsman that she did not presign  
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1 anything, and that everything was signed after the fact. (Tr.  
2 33.) Forsman and Dwyer reviewed paperwork brought to the inter-  
3 view upon Nesbitt's request by LaTray, and found several packets  
4 of bonds and forms presigned by Nesbitt. (Tr. 25, 34, and 160.)  
5 At the conclusion of the interview, Forsman advised LaTray and  
6 Nesbitt that the only individual that could write the surety bond  
7 or assure the sale was Nesbitt. (Tr. 24 and 36.) Nesbitt  
8 admitted to being so informed by Forsman. (Tr. 197-98.) A  
9 previous inquiry by DOI had been made of Nesbitt on December 8,  
10 1998, regarding the license status of JD's Bail Bonds representa-  
11 tives. (Tr. 180-81; Exhibits 2 and 3.)

12 4. On March 24, 2001, a \$5,000 surety of appearance for  
13 [REDACTED] via bail bond no. [REDACTED] was issued under  
14 Nesbitt's name, as attorney-in-fact for Seneca Insurance Company,  
15 Inc. (Tr. 135-36; Exhibit B.) At the request of [REDACTED]  
16 friends, (Tr. 222-23) Lynn LaTray came to the jail and conducted  
17 with [REDACTED] the business transaction regarding this bail  
18 bond, including obtaining from [REDACTED] the following information  
19 regarding his bonding-out: his name, charges against him, method  
20 of payment for the bond, and existence of collateral for the  
21 bond. (Tr. 221-22.) [REDACTED] did not meet with, or talk to  
22 Nesbitt regarding the transaction. (Tr. 223.)

23 5. In March of 2001, Nesbitt purchased a newspaper  
24 advertisement advising that JD's Bail Bond is not out of business  
25 and that Terri Phares from Chinook is working on a temporary  
26 emergency license through JD's Bail Bonds until she gets her  
27



1 regular license. (Exhibit 4; Tr. 199-201.) Although Nesbitt  
2 testified that a license application for Phares was made, no  
3 license was in fact received. (Tr. 201.)

4 6. In 1998, Ms. Nesbitt allowed her husband, John Nesbitt,  
5 to write a single bond for [REDACTED] mistakenly believing  
6 that he was allowed to do so pursuant to a power of attorney  
7 between Mr. and Mrs. Nesbitt. Ms. Nesbitt admitted this to the  
8 Chief of the Insurance Investigation Bureau, Leon L. Belville,  
9 and no disciplinary action was taken by the State Auditor's  
10 Office. (Tr. 179-82 and 204-05.)

11 7. By her own admission, and despite previous admonitions  
12 by DOI, Nesbitt presigned surety bonds until six weeks prior to  
13 the August 30, 20001, hearing in this matter. (Tr. 171-72;  
14 202-03.)

15 8. As collateral for his surety bond issued by JD's Bail  
16 Bonds, [REDACTED] pledged and surrendered to JD's Bail Bonds  
17 via Lynn LaTray, a vehicle orally given to him five years earlier  
18 (Tr. 111) and used by him while he was going to school, but for  
19 which title had been retained by his father. (Tr. 83; 86; 93;  
20 94; 103; 111.)

21 9. On April 9, 2001, a cash bond was paid to the Havre  
22 City Court by [REDACTED] mother, which was then substituted  
23 by City Judge Joyce Perszyk, as collateral for the truck her son  
24 had previously pledged in order to obtain his bail bond. As a  
25 result, City Judge Joyce Perszyk released JD's collateralized  
26  
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1 bond which had been issued on behalf of [REDACTED] (Tr. 100,  
2 115, 117 and 211; Exhibit B.)

3 10. Previously, at 9:00 a.m. on April 9, 2001, Nesbitt  
4 spoke to Judge Perszyk about title problems and asked the Judge  
5 to not release JD's bail bond. Judge Perszyk refused Nesbitt's  
6 request. (Tr. 164, 165 and 210-11.) Thereafter, on April 9,  
7 2001, after having received a written statement from [REDACTED]  
8 [REDACTED] father, [REDACTED] faxed to (and delivered to  
9 Nesbitt by) the Havre Police Department authorizing [REDACTED]  
10 to remove his "1998 blue Toyota pickup" from JD's Bail Bonds,  
11 Nesbitt did in fact release to [REDACTED] the vehicle [REDACTED]  
12 had pledged as collateral for his bail bond. (Exhibit E; Tr.  
13 101, 109, 130, 147, 165-66.)

14 11. Although [REDACTED] asserted to Nesbitt that he was  
15 the owner of the vehicle which JD's Bail Bonds had accepted as  
16 collateral for [REDACTED] bail bond, no proof of title was  
17 ever presented to Nesbitt. (Tr. 99, 108, 115, 147, 163.)

18 12. On or about June 21, 2000, [REDACTED] gave title to  
19 her vehicle to a friend, [REDACTED], who in turn used the  
20 vehicle as collateral to obtain a bail bond for another  
21 individual. [REDACTED] had nothing to do with the bonding trans-  
22 action, and did not cosign for the bond. (Tr. 156 and 217.)

23 13. Thereafter, [REDACTED] was contacted by Nesbitt. Nesbitt  
24 told [REDACTED] that she had an hour to come-up with \$5,330 or she  
25 (Nesbitt) was going to have a warrant out for her [REDACTED]  
26 arrest, and impound her vehicle. (Tr. 217.) In response to  
27



1 these statements, [REDACTED] paid Nesbitt and subsequently went to the  
2 Hill County Attorney who filed charges of criminal intimidation  
3 against Nesbitt. (Tr. 218; Exhibit 1.)

4 14. Regarding the incident, Nesbitt pled guilty on  
5 December 6, 2000, to the criminal offense of intimidation, a  
6 misdemeanor (Tr. 38; Exhibit 1) and made restitution to [REDACTED] in  
7 the amount of \$5,330. (Exhibit 1; Tr. 219.) Within the Judg-  
8 ment, Judge Warner listed reasons for the sentence. (Exhibit 1.)

9 From the foregoing findings of fact, the Hearing Examiner  
10 makes the following proposed:

11 CONCLUSIONS OF LAW

12 1. According to § 2-15-1903, MCA, the State Auditor is the  
13 Commissioner of Insurance (COI).

14 2. The COI has jurisdiction over this matter pursuant to  
15 § 33-1-311, MCA. Section 33-1-311, MCA, requires the COI to  
16 enforce the applicable provisions of the insurance laws of this  
17 state. Under § 33-1-311(3), MCA, the COI has a duty to "ensure  
18 that the interests of consumers are protected" and under §  
19 33-1-311(2), MCA, has authority as may be reasonably implied by  
20 the Insurance Code provisions. Under § 33-1-311(4), MCA, the COI  
21 has the additional duty of conducting investigations and examina-  
22 tions of insurance matters to determine whether any person has  
23 violated any provisions of the laws of this state.

24 3. Under § 33-1-315, MCA, the COI may compel the produc-  
25 tion of documents.

26 4. Nesbitt violated § 33-17-1001(1)(f), MCA, by coercing  
27 [REDACTED] to payover to her (Nesbitt) money regarding a bail

1 bond business affair conducted under her Montana insurance  
2 producers's license. Nesbitt also violated § 33-17-1001(1)(d),  
3 MCA, by improperly withholding the money coerced from [REDACTED] until  
4 ordered to retribute that money to [REDACTED] in accordance with the  
5 terms of a December 6, 2000, Montana District Court Judgment.

6 5. Nesbitt violated § 33-17-1001(1)(m), MCA, by using an  
7 unlicensed employee to conduct a bonding transaction on behalf of  
8 JD's Bail Bonds with [REDACTED] Nesbitt thereby accepted  
9 insurance business from an unlicensed person.

10 6. Nesbitt is found not to be in violation of § 33-17-  
11 1001(1)(d), MCA, regarding the withholding of [REDACTED] vehicle.  
12 Although there is an assertion that the whole incident was  
13 actually about bonding money, the weight of the evidence points  
14 toward a question of collateral ownership. The evidence also  
15 shows that the vehicle was in fact returned on the same day that  
16 a cash bond was substituted for the vehicle as collateral, once  
17 indication of ownership was demonstrated by Barrens to the  
18 satisfaction of the Havre Police Department and subsequently  
19 conveyed to Nesbitt by the Havre police.

20 7. Although much of the evidence points toward a possible  
21 violation of § 33-17-1001(1)(f), MCA, regarding incompetence, no  
22 evidence was presented which would demonstrate competency  
23 standards for bail bond sureties within that occupation.

24 8. The evidence underlying the findings, in particular the  
25 complete disregard of previous warnings by the DOI, indicates  
26 that the penalty proposed by DOI is appropriate.

27

1 From the foregoing Findings of Fact and Conclusions of Law,  
2 the Hearing Examiner proposes to the Commissioner of Insurance  
3 (COI) the following:


4 ORDER

5 1. The penalty proposed by DOI for Ms. Nesbitt's violation  
6 of § 33-17-1001(1)(d), (f) and (m), MCA, is hereby approved and  
7 accepted.

8 2. Pursuant to § 33-17-1001(1), MCA, the insurance  
9 producer license of Debra Nesbitt is hereby revoked.

10 3. In accordance with § 33-1-317, MCA, Ms. Nesbitt is  
11 hereby fined the sum of \$2,500.00.

12 Dated this 24<sup>th</sup> day of December, 2001.

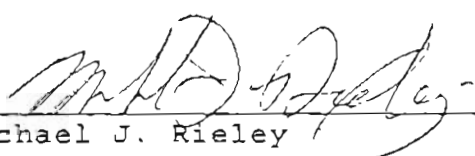
13   
14 Michael J. Rieley  
15 Hearing Examiner

16 CERTIFICATE OF SERVICE

17 I, Michael J. Rieley, do hereby certify I served a copy of  
18 the foregoing Hearing Examiner's Proposed Findings of Fact,  
19 Conclusions of Law, and Order upon all parties of record on the  
20 24<sup>th</sup> day of December, 2001, by mailing a copy thereof to:

21 Ms. Roberta Cross Guns  
22 State Auditor's Office  
23 840 Helena Avenue  
24 P.O. Box 4009  
25 Helena, MT 59604-4009

26 Ms. Jennifer L. Scheinz  
27 Attorney at Law  
7 West Sixth Avenue, Suite 4Q  
Helena, MT 59601

28   
29 Michael J. Rieley